IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 1342 OF 2006.

Shri Ranganath S. Kathe ... Petitioner.

V/s.

Shri Amir Abdul Kadir Mondhe
and others. ... Respondents.

M.M.Sathaye for the petitioner.

CORAM: V.C.DAGA, J.

DATED: 10th March 2006.

P.C.:

. Heard.

. Perused petition with annexures thereto.

2. This petition is directed against the order dated 17th February, 2006 passed below Exh.53 in Civil Appeal No.311/2000 by the First Adhoc Additional District Judge, Nasik rejecting application for amendment to the written statement under order VI rule 17 of Code of Civil Procedure, 1908; filed at the appellate stage, that too; after seeking several adjournments; when the appeal was fixed for hearing.

3. Having heard learned counsel for the petitioner and having seen the text of the amendment sought to be made, no fault can be found with the impugned order.

4. The petitioner/ appellant therein (original defendant) desired to contend through the amendment that the plaintiff having transferred his property in different parts; to different persons; ceased to be the the owner of the suit property as such not entitled to maintain suit.

5. The above The amendment nowhere specifies as to in how many pieces the property was divided; to whom and when it was sold; and that when and how did he acquire this information. None of these details are to be found in the application for amendment. The text of the proposed amendment is as vague as anything could be. Once such a vague amendment is allowed, then the other side will have to, obviously, move for better particulars. It is bound result in protracting hearing of the appeal.

6. Apart from the above, the proposed amendment is not bonafide as the prayer to make amendment was made after seeking several adjournments in the appeal; that too, when the appeal was fixed for final hearing in the month of February, 2006. The suit appears to have been

filed in the year 1992. The appeal was filed in the year 2000, whereas prayer for amendment was made in the year 2006. It is, thus, clear that application for amendment was moved after six years; that too; in appeal with a view to delay its hearing.

7. The learned counsel appearing for the petitioner urged that amendment has to be allowed liberally and no merits of the amendment can be examined while considering the question as to whether or not the proposed amendment should be allowed. He placed reliance on the judgments of the Apex Court; viz. **Estralla Rubber v. Dass Estate (P) Ltd.**, (2001) 8 SCC 97, **Pankaja v. Yellappa**, (2004) 6 SCC 415, **Badrinarayan v. Vinodkumar**, 2003(2) Mh.L.J. 120 and **Baburao v. Mah.Insecticides Ltd.**, 2004(2) Mh.L.J. 717.

8. The law of amendment is well settled. It is, no doubt, true that all amendments should be allowed which satisfy two conditions, namely, (i) of not working injustice to the other side and (ii) of being necessary for the purpose of determination of real question in dispute between the parties. However, absence of bonafides,

laches on the part of the person moving application for amendment, vague pleadings in the proposed amendment with absence of material particulars; unnecessary and irrelevant allegations sought to be made in the proposed amendment cannot be ignored. The Privy Council as back as in the year 1949 in the case of A.G. of FIJI v. J.P.Bayly Ltd., AIR (37) 1950 PC 73 ruled as under:-

> "..... Where such issues are involved, it is essential to their proper determination that the pleadings should state with particularity the claims made by the one side and the other and that the Court should be fully seised of all the facts relevant thereto....."

It is essential that for proper determination of the issues, pleadings are required to be set out with particulars of the claims.

9. In the light of the above law laid down by the Privy Council, if the text of proposed amendment; in case at hand; is examined, the same is absolutely vague. As stated hereinabove, the proposed amendment does not give any material particulars. It does not disclose the names of

the persons; who alleged to have purchased part of the the property. No attempt is made to join the alleged purchasers of the property as parties to the appeal. The documents by which the suit property is alleged to have been transferred in different part are not disclosed. None of these essential ingredients is to be found in the pleadings. Thus, the proposed amendment is absolutely vague. No useful purpose would be served by allowing such half hearted amendment. It will not serve ends of justice, rather it will result in protracting hearing of the appeal. Such amendment was rightly rejected by the appellate Court.

10. The view taken by the Court below is a reasonable and possible view and cannot be interfered with in writ jurisdiction of this Court under Article 227 of the Constitution of India. This Court not being a court of appeal cannot substitute the well considered view and order of the lower appellate Court based on exercise of discretion. The Court below has rightly exercised its discretion.

11. The petition is, thus, liable to be

dismissed in limine being frivolous, moved with a specific intention to protract the hearing of the appeal. In order to arrest tendency to move frivolous applications with a view to protract litigation, interest of justice require imposition of heavy costs. Petitioner is, therefore, directed to deposit costs quantified in the sum of Rs.1,500/- in the lower appellate Court for being paid to the respondent/ original plaintiff. Failure on the part of the petitioner to deposit the amount of costs with the lower appellate Court within fifteen days from the receipt of copy of this order by the lower appellate Court, the appeal filed by the petitioner pending in the lower appellate Court itself shall stand dismissed automatically.

12. In the result, petition is dismissed in limine in terms of this order.

(V.C.DAGA, J.)